

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:01-00242-01

LUIS JOSE LUCIANO-PICHARDO

MEMORANDUM OPINION AND JUDGMENT ORDER

The court is proceeding on its own motion, pursuant to 18 U.S.C. § 3582(c)(2), to reduce defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to the court's Standing Order, this case was designated for Standard consideration on April 11, 2008.


The Court has received and considered the original Presentence Investigation Report (PSI), Judgment and Commitment Orders and Statements of Reasons, addendum to the PSI received from the Probation Office, and any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Based on the foregoing considerations, the motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level of 35. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of 86 months*, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. § 1B1.10(b)(2)(C).

The Clerk is DIRECTED to send a copy of this Memorandum Opinion and Judgment Order, as well as the Order Regarding Motion for Sentence Reduction (AO 247) filed this day, to defendant, counsel of record, the Federal Public Defender, the United States Marshal for the Southern District of West Virginia, and to the United States Probation Office for forwarding to the Sentencing Commission and Bureau of Prisons.

It is SO ORDERED this 15th day of January, 2009.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge

* The previously imposed term of imprisonment was less than the applicable guideline range because of a departure based on the government's Rule 35 motion. The new sentence is comparably less than the amended guideline range.